

OFFICE OF THE ATTORNEY GENERAL 85-00114



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DEC 6 1984

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Honorable Gwin Wells
Mayor, City of Sumiton
P. O. Box 10
Sumiton, AL 35148

Municipalities -- Bingo --
Licenses

City of Sumiton may not issue
a business license to any
person to operate a bingo game
room.

Dear Mayor Wells:

Your recent letter addressed to the Honorable Charles A. Graddick, Attorney General of the State of Alabama, has been received. Basically your letter requested an opinion as to whether the City of Sumiton could legally grant a business license to any person to operate a bingo game business within the city limits of the City of Sumiton, or its police jurisdiction.

Article IV, Section 65 of the Constitution of Alabama 1901 prohibits conducting lotteries in the State of Alabama, and specifically provides:

The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets or tickets in any scheme in the nature of a lottery; and all acts or parts of acts heretofore passed by the Legislature of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby voided.

The Supreme Court of Alabama has time and again held that Section 65 of the Constitution of Alabama prohibits the Legislature of Alabama from authorizing a lottery in Alabama or allowing any person to engage in the business of conducting a lottery. Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 (1971); Opinion of the Justices, 249 Ala. 516, 31 So.2d 753 (1947); Mosley v. State, 255 Ala. 130, 50 So.2d 433 (1951). In the case of Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 (1971), the elements of a lottery are defined as: (1) a prize, (2) awarded by chance, (3) for a consideration. Therefore, when a prize is awarded by chance for a consideration such as in a bingo game, then the conduct of such business must be considered in violation of the Constitution of Alabama. In the case of State v. Crayton, 344 So.2d 771 (Ala.Civ.App.), cert. denied, 344 So.2d 755 (Ala. 1977), the Alabama Court of Civil Appeals held that the operation of a bingo parlor wherein a consideration was paid to take a chance on winning a prize or a jackpot constituted the operation of a lottery and therefore was illegal.

There are 4 counties within the State of Alabama at the present time in which bingo games are being conducted on a regular basis. It should be noted however that before any bingo parlors could legally be operated in Jefferson, Madison, Mobile or Montgomery Counties, it was necessary for the people of Alabama to vote on special amendments to the Constitution of Alabama allowing such activities. [For example, see: Amendment 386 (Jefferson Co.), Amendment 387 (Madison Co.), Amendment 440 (Mobile Co.) and Amendment 413 (Montgomery Co.)] A search of the Constitution of Alabama 1901 reveals that no amendment to the Constitution has been passed by the people of Alabama to allow the operation of bingo parlors or the playing of bingo games for a consideration in Walker County. It is my opinion, therefore, that until the people of Alabama through a constitutional amendment authorize the operation of bingo parlors or the playing of bingo games for a consideration in Walker County, no municipality in Walker County may legally issue a business license to any person for the purpose of operating a bingo gameroom within the city limits of the municipality or its police jurisdiction.

I hope I have fully answered the question contained in your request and if I can be of any further service to you in this matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-


JOHN J. BRECKENRIDGE
Assistant Attorney General

JJB:ccc